

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ELLEN GARBER,

Plaintiff,

v.

Case Number 07-14835-BC
Honorable Thomas L. Ludington

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT,
OVERRULING PLAINTIFF'S OBJECTIONS,
AND DENYING PLAINTIFF'S APPLICATIONS TO PROCEED
IN FORMA PAUPERIS AND FOR APPOINTMENT OF COUNSEL,
AND DIRECTING PLAINTIFF TO PAY FILING FEE

This matter is before the Court on a second report and recommendation issued by Magistrate Judge Charles E. Binder on November 15, 2007, recommending that the Court deny Plaintiff Ellen Garber's application to proceed *in forma pauperis* in her civil action against Defendant Commissioner of Social Security.

On November 9, 2007, Plaintiff filed an application to proceed *in forma pauperis* and an application for appointment of counsel, in support of her contention that she is indigent. There, she reports that she has a checking account balance of approximately \$215,000, which generates interest of approximately \$9,500 per year, and she also owns a car that she values at \$12,000 and stock that she values at \$1,000. She also states that she is unemployed.

The magistrate judge recommended denying her application to proceed *in forma pauperis*, because of she has the assets listed above. Plaintiff timely filed objections, asserting that she lives on the interest generated on the funds in her checking account. Given her alleged disability, she

maintains that she must rely on this income stream for the remainder of her life, such that she would prefer not to diminish the principal. She also recites a series of monthly expenses and raises a question about any consideration of her living arrangement, to which the magistrate judge referred.

Regardless of whether she receives some form of assistance from a family member in her living accommodations or only collects mail at that address, Plaintiff has substantial assets, which she has listed in her applications. The amount of funds that she maintains in her checking account, as well as other resources, including her vehicle and stock, prevent the Court from concluding that she has reached the level of indigency required to proceed *in forma pauperis* under 28 U.S.C. § 1915.

Accordingly, it is **ORDERED** that the magistrate judge's recommendation [dkt #5] is **ADOPTED**, that Plaintiff's objections are **OVERRULED**, and that Plaintiff's applications to proceed *in forma pauperis* and for appointment of counsel [dkt ##2, 3] are **DENIED**.

It is further **ORDERED** that Plaintiff shall pay the filing fee in full on or before **January 7, 2008**. In the event that Plaintiff fails to pay the filing fee, the case shall be dismissed without prejudice.

It is further **ORDERED** that in the event that Plaintiff pays the filing fee, the case is **REFERRED** for general case management to the magistrate judge for any pretrial proceedings consistent with this Court's initial full case reference order.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: December 10, 2007

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on December 10, 2007.

s/Tracy A. Jacobs
TRACY A. JACOBS